

**Forrest City Machine Works, Inc. and Aaron Williams.** Case 26–CA–17735

October 29, 1999

**SUPPLEMENTAL DECISION AND ORDER**

BY MEMBERS FOX, LIEBMAN, AND BRAME

On February 26, 1999, Administrative Law Judge Robert C. Batson issued the attached supplemental decision.<sup>1</sup> The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision, the supplemental decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>2</sup> and conclusions and to adopt the recommended Order<sup>3</sup> as modified and set forth in full below.

**ORDER**

The National Labor Relations Board orders that the Respondent, Forrest City Machine Works, Inc., Forrest City, Arkansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to allow employees to rescind their resignations or otherwise discriminating against them because they engaged in protected activity for mutual aid and

<sup>1</sup> On June 30, 1997, Judge Batson issued a bench decision in this case in which he found that the Respondent had violated Sec. 8(a)(1) of the Act by discharging employees Aaron Williams and Robert Fields because they engaged in protected concerted activity. Thereafter, the Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Respondent filed a reply brief. On September 24, 1998, we remanded the proceeding to Judge Batson directing that he reopen the record to receive specific evidence and that he make explicit credibility determinations and findings with respect to seven issues. 326 NLRB 1093.

<sup>2</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

We agree with the judge's finding that Williams' attempt to rescind his resignation also included Fields. Thus, Williams was the spokesman for the employees seeking a raise and as the judge found and Operations Manager Johnny Watkins testified, Watkins interpreted Fields as saying that he would "do whatever Williams did." Therefore, when Williams attempted to rescind his resignation, he was also acting on behalf of Fields.

<sup>3</sup> In his bench decision the judge ordered the Respondent to cease and desist from discharging or otherwise discriminating against its employees. In his supplemental decision, the judge determined that the Respondent violated Sec. 8(a)(1) of the Act not by discharging the employees, but by refusing to permit employee Williams to rescind both his and employee Field's resignations. We will conform the recommended Order to the judge's findings in the supplemental decision. We will also modify the recommended Order in accordance with *Indian Hills Care Center*, 321 NLRB 144 (1996); and *Excel Container*, 325 NLRB 17 (1997).

protection with respect to wages, hours, and other terms and conditions of employment.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Aaron Williams and Robert Fields full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights and privileges previously enjoyed.

(b) Make Aaron Williams and Robert Fields whole for any loss of earnings and other benefits they may have suffered by reason of the refusal to allow them to rescind their resignations. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(c) Within 14 days from the date of this Order, remove from the personnel files of Aaron Williams and Robert Fields any references to the refusal to allow them to rescind their resignations and within 3 days thereafter notify them that it has done so and that such shall not be used against them in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Forrest City, Arkansas, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by the Respondent at any time since October 4, 1996.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a re-

<sup>4</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading, "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

sponsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to allow employees to rescind their resignations or otherwise discriminate against our employees because they engaged in concerted activity for their mutual aid or protection with respect to wages, hours, and terms and conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days of the Board's Order, offer Aaron Williams and Robert Fields full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Aaron Williams and Robert Fields whole for any loss of earnings and other benefits they may have suffered by reason of our discrimination against them.

WE WILL, within 14 days from the date of the Board's Order, remove from the personnel files of Aaron Williams and Robert Fields any reference to our unlawful refusal to allow them to rescind their resignations, and WE WILL, within 3 days thereafter, notify them in writing that we have done so and that we will not use our unlawful refusal to allow them to rescind their resignations against them in any way.

FORREST CITY MACHINE WORKS, INC.

*Tamra Sikkink and Ronald K. Hooks, Esqs., for the General Counsel.*

*J. Bruce Cross and Rick Roderick, Esqs., for the Respondent.*

## SUPPLEMENTAL DECISION

ROBERT C. BATSON, Administrative Law Judge. On June 30, 1997, I issued a bench decision in this case in which I found

that Respondent had violated Section 8(a)(1) of the National Labor Relations Act (the Act), by discharging Aaron Williams and Robert Fields because they engaged in protected concerted activity with other employees for their mutual aid and protection, and an appropriate recommended Order.

On September 24, 1998, the Board issued its Decision and Order Remanding this proceeding to me. (326 NLRB 1093.) The Board directed that I reopen the record for the sole purpose of receiving into evidence Respondent's proffered Exhibits 5, 6, and 7, and accord them whatever evidentiary weight they might warrant. These exhibits had been rejected at the hearing. The Board further directed that I make explicit credibility resolutions and findings with respect to seven different issues, which shall be considered *seriatim*.

The record is reopened and Respondent's Exhibits 5, 6, and 7 are received, and the record is now closed.

Dealing first with Respondent's exhibits which have now been received. Respondent's Exhibit 5 is the application of Aaron Williams for unemployment benefits with the Arkansas Employment Security Department wherein Williams states, "I asked for a raise and was denied so I resigned. Later I changed my mind and my employer would not let me." The remainder of this application is completed by the Employer's operations manager, Johnny Watkins. In item 5, he states, "He informed management he wanted a raise and would give the company 2 weeks to give him a raise or he was quitting." In item 7, Watkins states, "I have attached statement from Company Management. It explains in detail the reason for separation." The referenced statement in Watkins' comment in item 7 was not attached to the proffered exhibit. Had I noted that fact at the time of proffer, it would have afforded a further reason for its rejection as an incomplete document.

Respondent's Exhibit 5, or the portion thereof in evidence, is not inconsistent with the testimony of Williams or Plant Manager Walter Neisler. The only conflict between the testimony of Williams and Neisler was as to when Williams attempted to rescind his threatened resignation. This issue will be considered later.

Respondent's Exhibit 6 is a form letter from the Arkansas Employment Security Department captioned, "Notice of Agency Determination" to Aaron Williams. The only potentially relevant portion of this exhibit is the paragraph entitled, "Finding of Facts" which was read into the record. (Tr. 145.) However, I will state them again. "You left your job after being denied a raise when you turned in your two week notice. You initiated the separation and have not shown good cause connected with your work." There is no reference as to whether or when Williams attempted to rescind his resignation as he stated in his application, or whether such rescission would have changed the results under the Arkansas Code referenced there.

Respondent's Exhibit 7 is a decision of the Arkansas Board of Review with respect to Robert G. Fields' application for unemployment benefits based on a hearing officer's report. The hearing officer's report was adopted by the Appeal Tribunal, after a vague and nonspecific discussion of the evidence before him, found that when Fields did not correct the operations manager saying he would quit if denied a raise Fields accepted it and since he was not guaranteed a raise his quitting was not for good cause connected with the work. I do not have a transcript of the hearing on which this finding was made.

Accordingly, I do not know whether the testimony given at that hearing was different or in conflict with that given before me.

I find nothing in these exhibits which would warrant my changing any finding made in my bench decision.

Returning now to the Board's remand concerning certain credibility resolutions, as to (1) exactly what Williams and Fields said at the October 4 meeting about what action they would take if their raises were denied. Preliminarily, and for background, about July 1996, Aaron Williams, Otis Dawson, Roy Burks, and Robert Fields got together and decided they should ask for a raise. With Williams as spokesman, they went to Plant Manager Walter Neisler, to whom they must first go before talking to anyone else in management. General Manager Brenda Blackwood was in the plant that day. According to Williams and others, she lived out of State and was only in the plant three or four times a year and was apparently the only official able to grant a raise. These four, along with Operations Manager Johnny Watkins, went to Blackwood's office. With Williams as spokesman, they asked Blackwood about a raise. She told them the plant owed a lot of money and generally that they were not in good financial condition. However, she told them she would talk with Hodges, the owner, and get back with them.

She had not gotten back with them by October 4, 1996. On that date, or the day before which is irrelevant, they again went to Neisler, and Williams told him they wanted to talk to Operations Manager Watkins about a raise. This was about 11:15 a.m. A few minutes later that day, Neisler told them Watkins would see them about 2 p.m. At that time they went to Watkins' office and then to Blackwood's. Williams told him that Blackwood was supposed to get back to them about a raise more than 2 months ago and she never did. Watkins asked what they would do if they didn't get a raise. Williams was first and told him that he was "willing to walk." Watkins told him if he did that he would not have a job and Williams acknowledged that he knew that. Otis Dawson then said that he would just slow down and give them \$8 worth of work for \$8 pay. Watkins told him they would not have that. Roy Burks then told him he was nearing retirement and would just continue to work. Robert Fields' response is the only one in issue here. Williams and Fields testified that Fields, who was last to respond, stated that he was with the majority. Watkins testified in substance that Fields motioned down the line and mumbled something that he did not understand, but construed him to be saying that he would do whatever Aaron Williams did.

Watkins then placed a call to Blackwood who was at her home in Texas and receiving no answer left a message on her telephone answering machine. A few minutes later, Blackwood returned the call and she and Watkins had a conversation, which the employees could not hear. According to Williams and the other employees testifying, Watkins did all the talking. Blackwood was put on the speakerphone and Watkins told her that the four named employees were there and wanted a raise and he had asked them what they would do if they did not get a raise. He told her that Williams had said he would quit. Otis Dawson said he would slow down. Burks had said he would continue to work, and that Robert Fields had said he would quit. None of the employees made any comment at that time. In substance, Blackwood told them that she would give good references to anyone who quit. She thanked Burks for staying and admonished Dawson to search his conscience with respect to slowing down. She then went into the Company's financial

condition and told them that they could not give a raise at that time. She then asked if there were any questions and no one asked any. The meeting then ended.

In order to consider the Board's remand as to exactly what Williams and Fields said at the October 4 meeting, I must consider the testimony of others present which will in part answer portions of the Board's other specific items.

First, with respect to Fields' testimony as to what he would do if not given a raise. Fields was the last to be asked by Watkins. On direct examination, he testified that he said, "If everybody else walk I will do the same thing. I'll just do whatever the majority do." (Tr. 62.) Fields testified that when Watkins got Blackwood on the phone on October 4, he told her that the four men there wanted a raise and if they did not get one, Williams was going to quit, Dawson was going to slow down, Burks was going to keep working, and that Fields was going to quit. Fields did not correct him. However, on further direct, he testified that he told him, "I would walk if everybody else walked, but if nobody walked, I would do just what the majority do." (Tr. 64.) He also testified that while Blackwood was on the speakerphone, none of the employees spoke to her but Watkins did all the talking. He answered, "no" to the question, "[D]id Ms. Blackwood ask if anyone had changed their minds?"

On cross-examination, Fields reiterated what everyone there was going to do if they did not get a raise. On cross-examination, the following occurred:

Q. [B]y Cross: What was the majority going to do sir?

A. I believe theys going to stay.

Q. The majority was going to stay?

A. Yes, sir.

Q. So you were going to slow down too?

A. No, I's just going to stay there and keep on doing what I's doing—keep on working.

Q. So that's what you meant when you said the majority?

A. Yes, sir.

Q. Did you explain that to anyone?

A. Well, I figured they should have known. If wasn't nobody going to walk but one person that means the other guys going to stay there too. [Sic.] (Tr. 81.)

On further cross-examination, Fields admitted that he found it strange that Watkins had told Blackwood that he would quit, but he did not say anything at that time to correct Watkins. Fields states that Johnny was telling her all he wanted her to know and that the conversation was between her and Johnny. (Tr. 81-82.)

Otis Dawson, who was one of the four employees at the October 4 meeting, was called as a witness by counsel for General Counsel. His testimony in material respects supports that of Williams and Fields as to what was said at this meeting. He testified that near the conclusion of the meeting, Blackwood asked if anyone had any questions but did not specifically ask if any one had changed their minds.

Dawson further testified that about 15 minutes after the meeting, he went to Williams and asked if he was really going to quit if he didn't get a raise. Williams told him that he was just saying that to get a raise, and that he was "just bluffing." He testified that on Monday, October 7, he talked to Williams who told him that he had gone to Ray Neisler and told him to

tell Johnny Watkins to tell Brenda Blackwood that he had changed his mind about quitting.

It appears that Dawson got the same impression as did Watkins, that Fields' motions and response was that he would do what Aaron Williams did.

Watkins and Neisler testified as did the others as to what Williams, Dawson, and Burks had said they would do if they didn't get a raise. The only dispute is as to what Fields has said. Watkins and Neisler testified that Fields was the last one to be asked and that he mumbled something, which Watkins could not understand and nodded toward Williams. Clearly, Watkins constructed Field's motions and mumbblings to indicate that he would do whatever Aaron Williams did.

The only conflict in the testimony is with respect to what Fields said he would do if denied a raise. Williams and all other witnesses testified that Williams said that he would quit. Based on the demeanor of Fields and his manner of testifying at the hearing, I find that his response was more nearly that testified to by Watkins. That he mumbled something, which Watkins admitted he could not understand, and nodded or waved down the line of the three employees beside him. In this respect, I find that Watkins did not repeat the question as he testified. I find that Fields intended to convey that he would do whatever the majority of the others did. However, Watkins, probably honestly, interpreted his motions to indicate that he would do whatever Williams, who was obviously the leader of the group, did. I find that there was an honest misunderstanding as to Fields' response and that there was no intentional fabrication of testimony in this respect. For purposes of this Decision, I find that Williams was spokesman for the group and that Fields conveyed to Watkins that he would do what Williams did.

With respect to the Board's remand (2) as to whether Blackwood asked if anyone had changed their minds about what action they would take if denied a raise. I find that she did not specifically ask if anyone had changed their mind, but did ask if there were any questions after telling them that they were not going to get a raise. I find that she intended that question to include whether anyone had changed their minds. Even had the question been specifically asked, I do not believe that either Williams or Fields would have spoken up at that point.

The Board's remand (3) whether Williams attempted to rescind his threatened resignation about 30 minutes after the October 4 meeting. I find that Williams did, as he testified, go to Plant Manager Neisler within a short time of the conclusion of the meeting, certainly before the end of the shift at about 3:30 p.m. on that Friday and tell him to tell Watkins to tell Brenda that he had changed his mind inasmuch as he could not afford to quit since he had a daughter in college. I find that this occurred on Friday, October 4, and not during the week of October 14, as testified by Neisler.

The Respondent acknowledged that both Williams and Fields were good employees, which is supported by their length of service, both in neighborhood of 20 years. It is evident to me that both Williams and Fields were honest, hard working employees and felt an obligation to their families. It is clear that Williams was bluffing when he said he would quit in 2 weeks if denied a raise. Williams would not have left his "bluff" on the table even over the weekend or long enough to be taken seriously by the Employer. Moreover, neither Williams nor Fields attempted to seek employment elsewhere.

The Board's remand (4) whether if Williams resigned and did not immediately attempt to rescind he did so before he was replaced. This was answered above where I found that Williams attempted to rescind his resignation at least prior to the end of the shift on Friday, October 4. Williams and Fields had not been replaced at that time.

The Board's remand (5) whether if Williams and Fields resigned and Williams, at some point, did attempt to rescind his resignation the rescission included Fields. This is also answered above. Watkins testified that he interpreted Fields' response to the question in issue here, that Fields would do whatever Williams did. It is clear that Williams was the spokesman for this group. Fields at no point is alleged to have said that he was "willing to walk" or that he would "quit." The most that he is alleged to have said is that he was with Aaron or that he would do whatever Williams did. Clearly, Williams' attempted rescission included Fields.

The Board's remand (6) whether the two new hires were replacements for Williams and Fields rather than a part of a normal seasonal buildup.

Brenda Blackwood gave testimony that orders for Respondent's farm equipment was much behind that of previous years. This testimony is not supported by any documentary evidence. The record does not show whether, when, or if, Respondent hired additional employees in the fall and winter of 1996.

I find that Respondent utilized these two new hires from walk-in applicants, in conjunction with the transfer of another employee from within the plant to learn the skill of Williams' job of 'Burner' as replacements for Williams and Fields because it refused to permit Williams' rescission of the threatened quit given to Plant Manager Neisler on October 4, because it believed Williams was becoming an agitator which might incite other employees to seek better benefits and wages from the employer.

While the Respondent attempted to skip over and entirely ignore the fact that this same group, led by Williams, to request a raise about July 1986 and that she had failed to get back with them as she had failed to get back with them after talking with the owner as she had promised.

The Board's remand (7) whether the Respondent was able to hire additional employees beyond the two it hired but did not do so.

There is no substantive credible evidence one way or the other on this issue. As noted above, the record does not disclose whether or when the Respondent hired additional employees in the fall and winter of 1996.

In short, as I did in my bench decision, I find that the Respondent refused to permit Williams to rescind either his or Fields' resignation because it felt that their conduct here might incite other employees to seek wage raises or engage in other protected concerted activities for their mutual aid and protection.

[Recommended Order omitted from publication.]